

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3341 of 1985

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

SUSHILKUMAR N BHATT

Versus

G S R T C

Appearance:

MR PS CHARI for Petitioner
MR SN SHELAT for Respondent

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 29/10/96

ORAL JUDGEMENT

1. In the present petition under Article 227 of the Constitution of India the petitioner challenges the judgement and award passed by the Labour Court at Rajkot, whereby the latter set aside the order of dismissal passed by the respondent as a result of a domestic inquiry on the grounds of misconduct, directed the petitioner to be reinstated to the original post with continuity of service, but held that the petitioner would not be entitled to backwages. In substance, this petition is directed against the denial of backwages to

him by the Labour Court.

2. The relevant and pertinent facts in brief are as under:

2.1 The petitioner was employed and working as a driver with the Gujarat State Road Transport Corporation at the relevant time. It was alleged that he remained absent on 29th January 1980 and thereafter without sanctioned leave, which amounted to misconduct. The petitioner was, therefore, charged with a chargesheet on 23rd May 1980 and after due inquiry wherein he participated, was given an opportunity of cross-examining the departmental witnesses, etc., he was found guilty of misconduct and a punishment of dismissal was imposed upon him.

2.2 The petitioner-workman, therefore, obtained a Reference under section 10(1)(c) of the Industrial Disputes Act, which was heard and decided substantially in his favour, as stated hereinabove.

3. While deciding the present petition this Court is required to bear in mind the extremely limited and circumscribed jurisdiction it exercises under Article 227 of the Constitution of India. This Court cannot interfere with the findings of fact or enter into reappreciation of evidence, and so far as the interference with the question of punishment is concerned, such interference would not be justified unless it can be shown that such punishment is so grossly disproportionate to the acts proved against the delinquent as would shock the conscience of this court, or that the order of punishment amounts to a perversity in law, or such order suffers from a patent non-application of mind, or is patently illegal and outside the jurisdiction of the Labour Court. Having given my anxious consideration to the facts and circumstances of the case, I have no hesitation in holding that none of these conditions are met.

4. So far as the factual aspect is concerned, it may be noted that the petitioner-workman had filed a statement of claim at Exh.4, and the respondent Corporation had filed its written statement at Exh.6.

4.1 The Labour Court has observed, while discussing the material on record before the inquiry officer and before itself, that as per Exh.11-the Chargesheet, the petitioner was charged with having remained absent from

29th January 1980 onwards without sanctioned leave. In this context the reply of the workman at Exh.12 specifically states that he had proceeded on leave on 29th January 1980 (i.e. he had remained absent from that day onwards) "as he had got his house repaired and thereafter he became sick", and he had, therefore, to remain on leave and to submit several reports from time to time together with medical certificates.

4.2 The Labour Court has examined the inquiry papers produced at Exh.13. On examination of the record of inquiry, the Labour Court found that the petitioner-workman had been permitted to cross-examine the witnesses and there was no violation of principles of natural justice. The Labour Court further found that the papers of the inquiry indicated that from 29th January 1980 upto 12th May 1980 the workman had submitted several reports supported by medical certificates. It may be noted here that neither the impugned judgement and award nor the record before the Labour Court clearly indicates the period of total absence of the petitioner-workman, except that it was in respect of the aforesaid period that he had submitted reports together with medical certificates.

4.3 On a total appreciation of the material on record the Labour Court came to the conclusion on a question of fact, that the petitioner had remained absent without getting his leave sanctioned in advance. In this context it is pertinent to note that the petitioner, as per his reply Exh.12, had specifically contended that he had to go since "he had got his house repaired". It, therefore, appears that with effect from 29th January 1980 he had, without applying for or without obtaining sanctioned leave, treated himself as if on official leave, for the purpose of getting his house repaired. It was only at some point thereafter that he fell sick and filed leave reports supported by medical certificates. Assuming in favour of the petitioner that the medical certificates were genuine, it is obvious from this state of the record that on 29th January 1980 and onwards, when the petitioner decided to remain absent from duty, it was not on account of illness or sickness. The most that can be said in his favour is that having proceeded on unauthorised leave, he fell sick at some later point of time, and medical certificates on record can only help him to the aforesaid extent.

5. In view of the state of the record the Labour Court has held, in its own language (which is not ideal), that the act of misconduct on the part of the petitioner

in remaining absent without sanctioned leave is proved and established. The Labour Court further held that his work was not of such an urgent nature so as to prevent the petitioner from applying for leave and for awaiting sanction thereto before actually proceeding on leave. Thus, the Labour Court found that although the punishment or dismissal was too harsh for such a misconduct, since the misconduct had in fact been proved, and there was no extenuating circumstances, the Labour Court in the exercise of its discretionary jurisdiction under section 11-A of the Industrial Disputes Act, felt that he should be denied back-wages by way of penalty. It was on this specific line of reasoning that the Labour Court although directing reinstatement with continuity of service, has chosen to deny the petitioner back-wages.

6. While deciding the present petition under Article 227 of the Constitution of India this Court is also required to bear in mind that the question of punishment is within the discretionary jurisdiction of the Labour Court under section 11-A of the I.D. Act, and this discretion cannot be lightly interfered with by this court. As already observed by me hereinabove, none of the conditions are shown to exist for interfering with the discretionary jurisdiction of the Labour Court. Even otherwise, on merits and particularly on the facts and in the circumstances of the case, even if this Court were to exercise discretionary jurisdiction afresh in respect of the order of punishment, I would not be inclined to take any other view.

7. In the result, the present petition is without substance and the reliefs sought herein cannot be granted. This petition is, therefore, rejected. Rule is discharged with no order as to costs.
